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Attorneys for Defendants

EDDIE BAUER, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KRISTAL D. SCHERER, an
individual, on behalf of herself
individually, all others similarly
situated, and on behalf of the general
pubic,

Plaintiffs,

v.

EDDIE BAUER, INC., a Delaware
corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 07-CV-2270-JM-AJB

[Assigned to the Honorable Jeffrey T.
Miller]

**DEFENDANT EDDIE BAUER,
INC.'S AMENDED NOTICE OF
MOTION TO DISMISS**

Date: February 8, 2008

Time: 1:30 p.m.

Courtroom: 16

Date Action Filed: Sept. 20, 2007

Date Action Removed: Dec. 3, 2007

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to plaintiff Kristal D. Scherer's request,
3 the hearing of defendant Eddie Bauer, Inc.'s ("Eddie Bauer") Motion to Dismiss, which
4 was previously set for January 18, 2008, at 1:30 p.m., is now continued and, hereby re-
5 noticed, to **February 8, 2008, at 1:30 p.m.**, in the Courtroom of the Honorable Jeffrey
6 T. Miller (Courtroom 16) located at 880 Front Street, Room 4290, San Diego, California
7 92101.

8 Defendant Eddie Bauer will, and hereby does, move the Court to dismiss with
9 prejudice (1) the First Cause of Action for alleged violations of California Labor Code
10 § 221, and (2) Fourth Causes of Action for alleged violations of California Business and
11 Professions Code § 17200, in Plaintiff Kristal D. Scherer's Complaint. Pursuant to Rule
12 12(b)(6) of the Federal Rules of Civil Procedure, Eddie Bauer moves to dismiss
13 Plaintiff's claims on the grounds that Plaintiff has failed to state a claim upon which
14 relief can be granted pursuant to California Labor Code Section 221 and California
15 Business and Professions Code Section 17200.

16 This Motion is based on this Amended Notice of Motion, the Motion and the
17 accompanying Memorandum of Points and Authorities filed on December 10, 2007, all
18 papers and pleadings in the Court's file, any other matter of which the Court may take
19 judicial notice, and upon such oral argument as may be presented to the Court at the
20 time of the hearing on this matter.

21
22 Dated: December 19, 2007 **AKIN GUMP STRAUSS HAUER & FELD LLP**

23
24 By: /s/ Kalia C. Petmecky
25 Kalia C. Petmecky
26 Attorneys for Defendant
27 EDDIE BAUER, INC.
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los Angeles, California 90067. On December 19, 2007, I electronically filed the foregoing **DEFENDANT EDDIE BAUER, INC.'S AMENDED NOTICE OF MOTION TO DISMISS** with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Sheldon A. Ostroff, APC sostrofflaw@aol.com

and I hereby certify that I have mailed by the United States Postal Service a courtesy copy of the same to the following non-ECF participants(s):

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Attorneys for Kristal D. Scherer

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 19, 2007 at Los Angeles, California.

Irma Edwards

[Print Name of Person Executing Proof]



[Signature]